

**OFFICIAL RECEIVER
PRACTICE CIRCULAR NO. 2 OF 2020**

**IMPLEMENTATION OF
INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT 2018**

This Practice Circular sets out the revised operational procedures for the administration of company winding up and debt restructuring cases pursuant to the Insolvency, Restructuring and Dissolution Act 2018 (“IRDA”) and its subsidiary legislation.

BACKGROUND

2. The IRDA, which came into effect on 30 July 2020, consolidates the written laws relating to personal and corporate insolvency and debt restructuring and establishes a licensing and regulatory regime for insolvency practitioners.

REVISED PROCEDURES

3. The IRDA seeks to strengthen Singapore’s insolvency and debt-restructuring regimes and to facilitate a more effective use of resources during case administration. In respect of the winding up regime, several changes were introduced to this effect, including but not limited to:

- a) Requiring applicants to pay the winding up deposit to the OR before the filing of a winding up application;
- b) Allowing the liquidator of a company (in the absence of a committee of inspection) to make an application to Court to allow payments received by the liquidator in the course of the winding up to be made into a special bank account; and
- c) Allowing payment of a bill of costs, charges or expenses in respect of a solicitor, manager, accountant, auctioneer, broker or other person employed or engaged by a liquidator in the winding up of a company to be made without having to tax the bill as long as certain conditions are met.

4. The detailed list of changes and its impact on the OR’s operational procedures is found in Annex A while the list of notable changes is found in Annex B.

STATUTORY FORMS

5. The forms prescribed under the Insolvency, Restructuring and Dissolution (“IRD”) Regulations can be found on our website at <https://io.mlaw.gov.sg/corporate-insolvency/forms/>.

APPLICABILITY

6. This Practice Circular applies only to companies that are wound up, placed into receivership or judicial management under the IDRA. It does **not** apply to the following:

- a) Limited liability partnerships and companies that are wound up under the Limited Liability Partnerships Act (Cap. 163A) (“LLPA”) or Companies Act (Cap. 50) (“CA”) respectively; and

- b) Companies that were placed into receivership and judicial management before the commencement of IRDA. For these companies, the existing arrangements and procedures stated under the CA shall still apply.

7. This Practice Circular shall take immediate effect.

CLARIFICATIONS

8. For queries regarding this Practice Circular, please contact us at Tel: 1800-2255-529 or through our online enquiry form at our website <https://eservices.mlaw.gov.sg/enquiry/>.

TAN BOON HENG
OFFICIAL RECEIVER
SINGAPORE

30 July 2020

(This Practice Circular is also available on the website of The Insolvency & Public Trustee's Office at: <https://io.mlaw.gov.sg>)

ANNEX A – CHANGES TO OPERATIONAL PROCEDURES

(A) PRE-WINDING UP

For Applicant

No	Item	Changes	Reference
1	Circumstances in which a company may be wound up by Court	Pursuant to section 125(2)(a) of the IRDA, the threshold for indebtedness has been increased from \$10,000 to <u>\$15,000</u> .	<u>IRDA</u> Section 125(2)(a) of the IRDA <u>CA</u> Section 254(2)(a) of the CA
2	Deposit to Official Receiver	Pursuant to rule 64 of the IRD (Corporate Insolvency and Restructuring) Rules 2020, <u>before</u> filing a winding up application in respect of a company, the applicant must make payment of the prescribed sum to the OR. This is a change from the current practice where the applicant places the prescribed sum with the OR after a winding up application has been filed.	<u>IRDA</u> Rule 64 of the IRD (Corporate Insolvency and Restructuring) Rules 2020 <u>CA</u> Rule 32(1)(e) of the Companies (Winding Up) Rules (“CWUR”)
3	Nomination and consent of liquidator	Pursuant to section 135(3) of the IRDA, the applicant may nominate the OR to be appointed as liquidator if: (a) the applicant has taken reasonable steps but is unable to obtain the consent of a licensed insolvency practitioner to be appointed as liquidator; and (b) the OR <u>consents</u> to be being nominated to be appointed as liquidator. This is a change from the current practice where the OR is the default liquidator where there is no court-appointed liquidator.	<u>IRDA</u> Section 135(3) of the IRDA <u>CA</u> Section 263(d) of the CA

For Company Directors

No	Item	Changes	Reference
1	Director's Statutory Declaration on Company's Inability to Continue Business by Reason of its Liabilities	Pursuant to section 161(1) of the IRDA, where the directors of a company have made and lodge with the OR a statutory declaration in the prescribed form, the directors must immediately appoint a licensed insolvency practitioner to be the provisional liquidator. This statutory declaration has to be lodged with the OR via the Insolvency Office e-Services at https://eservices.mlaw.gov.sg/io/ under "Corporate Insolvency/ Submission of Supporting Documents" in the e-Service. Payment of the lodgement fee shall be made online. This is a change from the current practice where a hardcopy of the statutory declaration is lodged with the OR together with the lodgement fee.	<u>IRDA</u> Section 161(1) of the IRDA <u>CA</u> Section 291(1) of the CA

(B) ADMINISTRATION OF WINDING UP

For Liquidators

No	Item	Changes	Reference
1a	Liquidator's Accounts	Pursuant to section 192(1) of the IRDA, every liquidator must lodge with the OR in the prescribed form and verified by statutory declaration, an account of the liquidator's receipts and payments and a statement of the position in the winding up within one month after the expiry of <u>12 months</u> after the date of the liquidator's appointment, every subsequent period of <u>12 months</u>. This is a change from the current practice where the liquidator is required to lodge with the OR and Registrar of Companies ("ROC") the said account and statement within one month after the expiry of a period of 6 months after the date of the liquidator's appointment and every subsequent period of 6 months.	<u>IRDA</u> Section 192(1) of the IRDA <u>CA</u> Section 317(1) of the CA
1b	Liquidator's Accounts (Cont'd)	The liquidator has to lodge this said account and statement directly with the OR via the Insolvency Office e-Services at https://eservices.mlaw.gov.sg/io/. Within <u>7 days</u> after lodging the account and statement with the OR, the liquidator must lodge with the ROC a <u>notice</u> in the prescribed form of the lodgement of that account and statement. This is a change from the current practice where the liquidator lodges the said account and statement to OR and ROC via the dual filing at ACRA's BizFile+ website.	<u>IRDA</u> Sections 192(1) and 192(2) of the IRDA <u>CA</u> Sections 317(1) and 317(1A) of the CA

No	Item	Changes	Reference
2	Advertisement on Holding of a Final Meeting (Voluntary Winding Up)	Pursuant to section 180(2)(d) of the IRDA, the liquidator must send to the OR a copy of the advertisement on the holding of a final meeting within <u>7 days</u> after its publication. The liquidator has to submit a copy of the advertisement to the OR via the Insolvency Office E-Services at https://eservices.mlaw.gov.sg/io/ under “Corporate Insolvency/ Submission of Supporting Documents” in the e-Service. This is a change from the current practice where the liquidator is not required to send a copy of the said advertisement to the OR.	<u>IRDA</u> Section 180(2)(d) of the IRDA <u>CA</u> Section 308 of the CA
2a	Advertisement on Holding of a Final Meeting (Voluntary Winding Up) (cont.)	Pursuant to section 308(2) of the CA, after a declaration is made by the liquidator and filed with the OR that neither at the date of commencement of the winding up nor since that date has the company had trade creditors, the advertisement need only be published in a newspaper. This declaration is longer required under IRDA.	<u>IRDA</u> No equivalent provision <u>CA</u> Section 308(2) of the CA

(C) DISSOLUTION OF COMPANY

For Liquidators

No	Item	Changes	Reference
1	Early Dissolution of a Company administered by the Liquidator	Pursuant to section 210 of the IRDA, a liquidator may apply to the OR for an early dissolution of a company in cases where the liquidator has reasonable cause to believe that: a) the realisable assets of the company are insufficient to cover the expenses of the winding up; and b) the affairs of the company do not require any further investigation. All applications shall be sent to the OR via the online enquiry form on our website at https://eservices.mlaw.gov.sg/enquiry/. This option of early dissolution is not available under the CA.	<u>IRDA</u> Section 210(2) of the IRDA <u>CA</u> No equivalent provision

(D) SCHEME OF ARRANGEMENT

No	Item	Changes	Reference
1	Appointment as Scheme Manager	Pursuant to section 47(3) of the IRDA, a person who has been appointed as a scheme manager in relation to a scheme of arrangement under Part 5 of the IRDA or Part VII of the Companies Act (Cap. 50) (“CA”) is required to give to the OR written notice in the prescribed form of the person’s appointment. The scheme manager may submit this notice to the OR via the Insolvency Office e-Services at https://eservices.mlaw.gov.sg/io/ under “Corporate Insolvency/ Submission of Supporting Documents” in the e-Service. This is a change from the current practice where a scheme manager is not required to give notice of his appointment to the OR.	<u>IRDA</u> Section 47(3) of the IRDA <u>CA</u> No equivalent provision

(E) RECEIVERSHIP

No	Item	Changes	Reference
1a	Appointment of receiver or manager	Pursuant to section 81(1) of the IRDA, a receiver or manager must <u>within 7 days</u> after obtaining the order or making the appointment, lodge notice of that fact <u>with the OR and ROC</u>. The receiver or manager shall lodge the notice with the OR and ROC through dual filing at ACRA's Bizfile+ webpage. A receiver or manager is currently only required to give notice to the ROC on his appointment,	<u>IRDA</u> Section 81(1) of the IRDA <u>CA</u> Section 221(1) of the IRDA
1b	Appointment of receiver or manager (Cont'd)	Pursuant to section 81(2) of the IRDA, a receiver or manager must <u>within 7 days</u> after he/she ceases to act as such, lodge notice of that fact <u>with the OR and ROC</u>. The receiver or manager shall lodge the notice with the OR and ROC through dual filing at ACRA's Bizfile+ webpage. A receiver or manager is currently only required to give notice to the ROC on his appointment,	<u>IRDA</u> Section 81(2) of the IRDA <u>CA</u> Section 221(2) of the IRDA
2	Provisions as to information where receiver or manager is appointed	Pursuant to section 83(1)(c) of the IRDA, a receiver or manager must <u>within 30 days</u> after receipt of a statement in the prescribed form as to the affairs of the company or corporation lodge, <u>with the OR and the ROC</u>, a copy of the statement and of any comments the receiver or manager sees fit to make in respect of the statement. The receiver or manager shall lodge the said statement with the OR and ROC through dual filing at ACRA's Bizfile+ webpage.	<u>IRDA</u> Section 83(1)(c) of the IRDA <u>CA</u> Section 223 of the IRDA

No	Item	Changes	Reference
		The current practice only requires a receiver or manager to lodge the said statement with the ROC.	
3	Lodging of accounts of receivers or managers	Pursuant to section 85(1) of the IRDA, the receiver or manager must <u>within 30 days</u> after the expiration of the period of 6 months from the date of his appointment and of every subsequent period of 6 months and <u>within 30 days</u> after he ceases to act as receiver or manager, lodge <u>with the OR and ROC</u> a detailed account of the receipts and payments. The receiver or manager shall lodge the said accounts with the OR and ROC through dual filing at ACRA's Bizfile+ webpage. The current practice only requires a receiver or manager to lodge the said accounts with the ROC.	<u>IRDA</u> Section 85(1) of the IRDA <u>CA</u> Section 225(1) of the IRDA

(F) JUDICIAL MANAGEMENT

No	Item	Changes	Reference
1	Statutory Declaration by Proposed Interim Judicial Manager	Pursuant to section 94(3)(e) of the IRDA, the proposed interim judicial manager has to lodge, <u>with the OR and the ROC</u>, a statutory declaration stating that (i) the proposed interim judicial manager is not in a position of conflict of interest; (ii) in the view of the proposed interim judicial manager, one or more purposes of judicial management mentioned in section 89(1) can be achieved; and (iii) the proposed interim judicial manager consents. The proposed interim judicial manager will lodge the said statutory declaration with the OR and ROC through dual filing at ACRA's Bizfile+ webpage. This option of judicial management by resolution of creditors is not available under the CA.	<u>IRDA</u> Section 94(3)(e) of the IRDA <u>CA</u> No equivalent provision
2	Notice of Appointment of Interim Judicial Manager/ Judicial Manager by Resolution of Creditors	Pursuant to section 95(5)(a) and s105(1)(a)(ii) of the IRDA, <u>within 3 days</u> after the entry of the company into interim judicial management/ judicial manager/ judicial manager has to lodge a notice of his appointment <u>with the OR and the ROC</u>. The interim judicial manager / judicial manager will lodge the notice of his appointment with the OR and ROC through dual filing at ACRA's Bizfile+ webpage. This option of judicial management by resolution of creditors is not available under the CA.	<u>IRDA</u> Sections 94(5)(a), 105(1)(a)(ii) of the IRDA <u>CA</u> No equivalent provision

No	Item	Changes	Reference
3	Lodgement of Judicial Management Order	Pursuant to section s105(1)(a)(i) of the IRDA, <u>within 3 days</u> after the entry of the company into judicial management, the judicial manager is required to lodge a copy of the judicial management order with the OR and ROC. The judicial manager will lodge a copy of the judicial management order with the OR and ROC through dual filing at ACRA's Bizfile+ webpage. This is a change from the current practice where the judicial manager is only required to lodge a copy of the judicial management order with the ROC.	<u>IRDA</u> Section 105(1)(a)(i) of the IRDA <u>CA</u> Section 227(K)(1)(a) of the IRDA
4	Notice of Expiry/ Extension of the Appointment of Judicial Manager	Pursuant to section 111(7) of the IRDA, where a judicial manager's term of office has expired or has been extended by the Court or a majority in number and value of the creditors of the company, the judicial manager must file notice of the expiry or extension of the term with— (a) the Court (unless the extension was by the Court); (b) <u>the ROC</u>; and (c) <u>the OR</u> The judicial manager will lodge a notice of expiry or extension with the term with the OR and ROC through dual filing at ACRA's Bizfile+ webpage. This is a change from the current practice where the extension of the judicial manager's term of office is made by the Court only.	<u>IRDA</u> Section 111(7) of the IRDA <u>CA</u> Section 227(B)(8) of the IRDA

No	Item	Changes	Reference
5	Discharge of Judicial Management Order/ Cessation of the Judicial Manager	Pursuant to sections 108(7), 112(3) and 115(5) of the IRDA, where the company is discharged from judicial management or interim judicial management, the judicial manager or interim judicial manager must immediately lodge <u>with the OR and the ROC</u> a copy of the order effecting the discharge. The judicial manager will lodge a copy of the order with the OR and ROC through dual filing at ACRA's Bizfile+ webpage. This is a change from the current practice where the copy of the order effecting the discharge is required to be lodged with only the ROC.	<u>IRDA</u> Sections 108(7), 112(3) and 115(5) of the IRDA <u>CA</u> Section 227(N)(5), 227(Q)(3) and 227(R)(5) of the IRDA

ANNEX B –NOTABLE CHANGES

No	Item	Changes	Reference
1	Regulation of Insolvency Practitioners	Part 3 Division 3 of the IRDA establishes a new licensing and regulatory regime for insolvency practitioners in Singapore. This new regime is administered by IPTO. A person must hold a valid insolvency practitioner's licence issued by the Licensing Officer before he can undertake the following corporate insolvency and restructuring appointments: a) Liquidator or provisional liquidator of the corporation; b) Judicial manager or interim judicial manager of the corporation; and c) Receiver or manager of the property of the corporation (being a company); or a receiver or manager of the property in Singapore of a corporation (not being a company) Please visit the Licensing and Regulation of Insolvency Practitioners Division ("LRIPD") webpage at https://lripd.mlaw.gov.sg for more information. This is a change from the current practice where an approved liquidator's licence is issued by the Accounting and Corporate Regulatory Authority is required in order to act as a liquidator or provisional liquidator or a receiver.	<u>IRDA</u> Part 3 Division 3 of the IRDA <u>CA</u> Section 9 of the CA

No	Item	Changes	Reference
2	Special Bank Account for Liquidator	Pursuant to rule 139(1) of the IRD (Corporate Insolvency and Restructuring) Rules 2020, where no committee of inspection has been appointed in respect of a company that is being wound up by the Court, the Court may, upon the application of the <u>liquidator</u> of the company, authorise the liquidator to make payments received by the liquidator in the course of the winding up into a special bank account. This is a change from the current practice where the said application to Court must be made by a committee of inspection.	<u>IRDA</u> Rule 139(1) of the IRD (Corporate Insolvency and Restructuring) Rules 2020 <u>CA</u> Rule 153 of the CWUR
3	Bill of costs, charges or expenses	Pursuant to rule 148 of the IRD (Corporate Insolvency and Restructuring) Rules 2020, unless otherwise requested by the OR, a payment in respect of a bill of costs, charges or expenses in respect of a solicitor, manager, accountant, auctioneer, broker or other person employed or engaged by a liquidator in the winding up of a company is <u>not</u> required to be taxed if such costs, charges or expenses: a) do not exceed the sum of \$10,000; or b) exceed the sum of \$10,000 but do not exceed the sum of \$100,000 and have been approved for payment by the committee of inspection in question. This is a change from the current practice where almost all bills of costs, charges or expenses of solicitors, managers, accountants, brokers or other persons have to be taxed before they can be paid.	<u>IRDA</u> Rule 148 of the IRD (Corporate Insolvency and Restructuring) Rules 2020 <u>CA</u> Rule 173 of the CWUR